

HEARING DECISION

COVER SHEET

Re: V. JOPLIN R-VIII SCHOOL DISTRICT

Student: (DOB:)

Parents:

Parents' Counsel: Pro Se

School District Counsel: James G. Thomeczek
Thomeczek Law Firm, LLC
1120 Olivette Executive Parkway, Suite 210
St. Louis, Mo. 63132

Panel Members: Karen Schwartz George Wilson

Panel Chair: J. Michael Cato
P.O. Box 668
Advance, Mo. 63730

Due Process Request Received: January 16, 2001

Due Process Hearing Held: April 9 and 10, 2001.

**BEFORE THE DEPARTMENT OF
ELEMENTARY AND SECONDARY EDUCATION**

IN THE MATTER OF;)	
,)	
)	
Petitioner,)	
)	
vs.)	
)	
JOPLIN R-VIII SCHOOL DISTRICT,)	
)	
Respondent.)	
)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
DECISION AND ORDER.**

The hearing panel, after hearing the evidence in this matter makes the following findings of fact and conclusions of law and issues the following decision and order:

FINDINGS OF FACT:

1. The Student, at all times relevant to this due process proceeding, resided with her parents within the boundaries of the Joplin R-VIII School District (hereinafter “School District”).
2. The School District is a reorganized School District organized pursuant to the Revised Statutes of the State of Missouri.
3. The hearing panel members in this due process proceeding are as follows:

Michael Cato	Hearing Chairperson
Dr. George Wilson	Hearing Panel Member
Mrs. Karen Schwartz	Hearing Panel Member

4. Counsel for the parents: None. Parents appear Pro Se.
5. Counsel for the School District: James G. Thomeczek, Thomeczek Law Firm, LLC, 1120 Olivette Executive Parkway, Suite 210, St. Louis, Mo. 63132.
6. Student was first enrolled in the School District as a pre-school student for the 1994-1995 and 1995-1996 school years. Student was evaluated for, and received, early childhood special education service by the School District.
7. A reevaluation, diagnostic summary was performed in June, 1996 in anticipation of enrolling Student in Kindergarten for the 1996-1997 school year. Student was enrolled and attended Kindergarten in the School District for the 1996-1997 school year and received special education services as outlined in Students Individualized Education Program (hereinafter "IEP"). Student was promoted to the First Grade for the 1997-1998 School Year. Student received special education services as outlined in Students' IEP. Student was retained in the First Grade for the 1998-1999 school year.
8. Student received special education services during the 1998-1999 school year as outlined in Student's IEP. Student was promoted to the Second Grade for the 1999-2000 school year.
9. The Student's three year reevaluation was completed in April, 1999 with the reevaluation team meeting on April 7, 1999. The Student's IEP was completed April 7, 1999. Student continued to be eligible to receive the categorical disability of "Visually impaired". Pursuant to the IEP Student would receive 530 minutes per week of "Pull Out" time. The Student would receive "Pull Out" time in the following areas: 300 minutes per week of vision therapy; 120 minutes of orientation and mobility therapy; 30 minutes of occupational therapy; 30 minutes of physical therapy and 50 minutes of speech and language therapy. Further, Student was to receive

the support of a “Paraprofessional” as well as receive accommodations for the use of Braille and tactile materials.

10. On May 3, 2000, Student’s IEP team convened to formulate an IEP for the Student for the 2000-2001 school year. Student received categorical disabilities of “Visually Impaired-Blind” and “Speech-Articulation”. Pursuant to the IEP Student is to receive 300 minutes of modified general education in reading as well as 460-610 minutes of “Pull-Out” services in math, orientation and mobility, physical therapy, occupational therapy, speech and language and physical education. Again, Student was to receive the support of a “Para-professional” as well as receive accommodations for the use of Braille and tactile materials.

11. During the 1999-2000 school year, conflict arose between the Student’s parents and School District personnel. In early March, 2000 the Student was relocated within the School District. Student continued to receive services and support as outlined in Student’s IEP.

12. On, January 15, 2001, the Students Parents requested due process and this hearing ensued.

ISSUES AND PURPOSE OF THE HEARING:

Parents raised the following issues, by way of a letter, dated January 15, 2001:

1. The School District failed to provide a free and appropriate education for Student as outlined in IDEA.
2. During the 1999-2000 school year the School District:
 - Failed to develop IEP goals appropriate for the current grade level of education.
 - Failed to provide appropriate and adequate instruction in math (counting, addition and subtraction on the abacus) to meet the goals detailed on the IEP Data/Goal Sheet for the IEP implemented 4/8/99.

- Failed to provide adequate and accurate materials for the instruction of reading in Braille.
- Failed to provide appropriate instruction for reading and writing in Braille.
- Failed to provide adequate instruction in the use of a slate and stylus for Braille as detailed on the IEP Data/Goal Sheet for the IEP implemented 4/8/99.

- Failed to provide appropriate materials and texts for classroom instruction.

3. During the 2000-2001 School District:

- Failed to provide adequately and appropriately trained and prepared teachers and para-professionals for VI instruction as required by IDEA.
- Failed to have an IEP in place for Student at the beginning of the school year as required by IDEA.
- Failed to follow the written IEP for VI instruction in Braille reading, writing, use of a Braille writer, use of a slate and stylus, math skills using the abacus, and reading time from a Braille clock.
- Failed to follow the written IEP concerning weekly progress reports.
- Failed to educate Student in the “Least Restrictive Environment”.
- Failed to provide accurate and legible copies of the written IEP to the parents in a timely manner.

4. Additionally, School District has:

- Modified Student Records and Grade Reports.
- Mis-represented actual progress towards goals on reports to the parents.
- Failed to ensure proper accessibility for extra curricular activities.

- Failed to provide adequate assistive technology necessary for progress toward educational goals.
- Exploited Student and attempted to intimidate/retaliate against parents and teachers.

TIMELINE INFORMATION

The request for due process was received on January 16, 2001 with the original deadline for the holding of the hearing and mailing of the decision being March 2, 2001. On February 7, 2001 a request was received on behalf of the School District requesting an extension of the hearing timelines. The extension was granted, over the objections of the Petitioner, and the timelines for both the hearing and decision were extended up to and including May 15, 2001. By agreement of the parties, this matter was set for hearing beginning April 9, 2001. Hearings were held April 9 and 10, 2001.

PANEL MEMBERS

Members of the due process panel were: Michael Cato, Chairperson, Dr. George Wilson, Panel Member and Mrs. Karen Schwartz, Panel Member.

EVIDENCE ADDUCED:

On Behalf of the Student, Parents introduced the direct testimony of the Mother as well as the direct testimony of the School Districts Superintendent. By agreement Parents' exhibits 1-42 were admitted together with a videotape of an IEP meeting held on August 19, 2000. Over the objection of the School District a videotape of the IEP meeting held May 3, 2000 was also admitted in to evidence.

On behalf of the School District, the District introduced the examination, as a hostile witness, of Father as well as the direct testimony of two members of the Districts' administration, a former teacher and a former paraprofessional. By agreement School District's exhibits 1-48 were admitted into evidence.

CONCLUSIONS OF LAW

The School District provided the Student with a free and appropriate public education for the 1999-2000 School Year in that an Individual Education Program was developed and implemented for the Student which was designed to meet the unique needs of the student, further that the Student enjoyed the necessary services and support needed to make academic progress during the 1999-2000 School Year.

The School District provided the Student with a free and appropriate public education for the 2000-2001 School Year in that an Individual Education Program was developed and implemented for the Student which was designed to meet the unique needs of the student, further that the Student enjoyed the necessary services and support needed to make academic progress during the 2000-2001 School Year. Parents provided no evidence to the contrary. Indeed, each Parent admitted during cross-examination that they were satisfied with the program and felt that the Student had progressed during the school year.

The panel finds no evidence that the goals and objectives were not appropriate for the Student, but rather finds the complaint to be that the goals and objectives were not on par with those of the Student's peers in the second grade. Parents apparently understand the requirement to mean that the "Goals and Objectives" should be on level with Student's peers based upon grade level and not this Student's abilities. We disagree. The goals and objectives are written

based upon this Student's abilities and are meant to provide for educational progress of this Student.. The panel concludes and finds that as for the 1999-2000 school year, the School District developed IEP goals which were appropriate for the Student's current level of education.

The panel finds insufficient evidence to support the allegation that the School District failed to provide for "appropriate and adequate instruction" in math using the abacus. It appears that this concern stems from Mother's class room observation of the Student during a certain period of math instruction Mother acknowledges that these observation were limited and from a distance. The parents presented no other testimony concerning this issue. This panel finds and concludes that the Student received the "appropriate and adequate" mathematics instruction as set out in the Students IEP for the 1999-2000 and 2000-2001 school years.

The panel finds insufficient evidence to support the allegation that the School District failed to provide adequate materials for the instruction of reading in Braille. The panel notes no evidence presented on behalf of Parents which would indicate that the materials for reading in Braille were inadequate. The panel noted that parents did present evidence of several grammatical errors in Braille materials provided for Student. While grammar errors in educational materials are unfortunate, they alone, do not rise to the level of "Inappropriate" materials for instruction. Parents allege that the School District failed to provide appropriate or adequate instruction for reading and writing in Braille as well as the use of the slate and stylus. Again, the panel does not find sufficient evidence to find this allegation as true. While the instruction in these areas may not have lived up to the expectations of the Parents, it appears that the Student continued to make educational progress. Based upon the testimony of the Parents, Student could read and write in Braille and could use the slate and stylus. Further, the parents

admitted that the Student was making educational progress. Seeing no evidence to the contrary, this panel can only conclude that the instruction was appropriate for the Student.

The panel finds and concludes that the School District provided appropriate materials and texts for classroom instruction of Student during the 1999-2000 and 2000-2001 school years. As noted above, the material and texts need not be perfect. No evidence was presented which would indicate to this panel that additional materials or text are necessary. This panel concludes that appropriate materials and texts were, in fact, provided for the Student during the 1999-2000 and 2000-2001 school years.

The Parents contended that the School District had failed to provide “adequately and appropriately” trained teachers and para-professionals for visually impaired (hereinafter “VI”) instruction. It appears to this panel that the real question presented by the parents related not so much to the training of the teacher as to the ability to have input into the hiring and retention of VI staff. This panel notes that the testimony presented indicates that the teachers and paraprofessional hired by the School District for VI instruction held appropriate credentials with the State of Missouri. This panel may not require the School District to hire personnel with credentials in excess of those mandated by state law.

The panel finds and concludes that the School District failed to have an updated IEP in place for the Student on August 23, 2000. The testimony presented indicated that the parties were unable, for a variety of reasons, to produce an updated IEP prior to the beginning of classes on August 23, 2000. It appears that from August 23, 2000 until September 19, 2000 the Student received the services and support of the prior IEP rather than one updated for the current school year. The panel notes that the Student continued to make academic progress under the prior IEP.

this panel concludes therefore, that the Student suffered no harm as the direct result of this failure and therefore no relief is justified based upon this claim.

No evidence was presented to indicate that the School District had failed to follow the IEP for VI instruction in Braille skills, use of a slate and stylus and math skills using the abacus. It appears from a review of the record that no attempt was made to compare and contrast the requirement of the IEP with the realities of the instruction. Without testimony or other evidence on this point, this panel can only conclude that the School District did, in fact, follow the IEP for VI instruction in these areas.

In a similar manner, this panel can find no evidence concerning failure to follow the IEP concerning weekly progress reports. The panel can only conclude that the School District complied with the IEP concerning progress reports.

The panel finds no credible evidence to support Parent's claim that the School District failed to educate the Student in the "Least Restrictive Environment". It appears from the testimony presented, including that of the parents, that the Student has done well in her current placement and spends a significant amount of time among grade level peers. Without supporting evidence, this claim must fail.

This panel concludes that the School District provided accurate and legible copies of the IEP to the parents in a timely manner. Father admitted during crossexamination that Parents had, in fact, received copies of the IEP upon request. The panel notes that the Parents were well aware of the contents of the IEP and had been very active in its formulation. In fact, this panel notes that the Parents had begun to video tape the IEP meetings for future reference.

This panel finds and concludes that School District did not "modify" Student's records and grade reports, or otherwise "misrepresent" Students actual progress towards goals on reports

to the parents. Parents pointed to an incident involving the Student's grade report. This incident centered around the question of quarter and semester dates placed on the School District's retained grade report which were not included on Student's copy of the grade report. Likewise the Parents point out some confusion as to a letter grade received by Student, it appearing that one letter grade was placed over another grade on the grade report. The School District presented evidence to allege that as to the question of the dates, the grade report are multi-piece carbon documents. Further, the School District's evidence indicated that as to the question of the letter grade received, that the Student received the higher of the two grades. It appears that the Student's classroom teacher had failed to factor in scores recorded by the Student's special education teacher. The Student's letter grade was changed upon review by the special education teacher and prior to the grade report being sent home to the Parents. Under these circumstances this panel declines to find that the School district had improperly 'Modified' records and grade reports or had otherwise "Misrepresented" actual progress.

The panel finds and concludes that based upon the admission of the Parents, the School District had provided for accessibility for extra curricular activities. The only evidence presented by the Parents on this issue relates to an alleged failure to provide the Student's para-professional or other adult to attend extracurricular activity with the Student. Parents admitted that this alleged failure involved a specific incident which was sponsored by a community based group. The evidence indicates that this incident was not a extracurricular activity, but was an activity which was sponsored by a community based group for the general public. The School District has no duty to provide a para-professional to enable the Student to participate in community based activities.

The panel finds and concludes that the School District had provided adequate assistive technology necessary for the Student's progress toward educational goals. The uncontroverted evidence indicates that the Student was making academic progress using the assistive technology devices provided by the School District. Parents admitted that the assistive technology was "adequate" and that the Student was making progress thereby. It appears that the true question raised by the Parents involved the number and maintenance of assistive devices owned by the School District and the Parents' desire for more advanced technologies. The technology need not be 'cutting edge' it need be only effective to assist the Student to make academic progress. The Panel finds and concludes that the assistive technology was adequate in terms of quality, quantity and maintenance.

This panel declines to address the issue of alleged intimidation or retaliation against the Student, family members or School District personnel, as this Panel is without jurisdiction to address such issues.

DECISION AND ORDER;

1. The School District provided the Student with a free and appropriate public education, in the Least Restrictive Environment, for the 1999-2000 and 2000-2001 School Years.
2. The IEP goals developed for the Student were appropriate.
3. The instruction in math, reading and writing Braille and the use of a slate and stylus, were appropriate and adequate to meet the goals as set out in the IEP.
4. The School District provided appropriate materials and texts for classroom instruction.
5. The School District provided credentialed teachers and para-professionals for VI instruction as required by law.

6. The School District followed the IEP for VI instruction in Braille skills, use of a slate and stylus, math skills using the abacus and weekly progress reports.
7. The School District did not improperly modify Student's records or grade reports.
8. The School District did not misrepresent Student's actual progress toward academic goals.
9. The assistive technology devices provided were adequate for Student to continue to make academic progress toward the goals and objectives as set out in the IEP.
10. No compensatory services or supports are necessary.
11. No issue raised by the Parents warrants any relief which is within the jurisdiction of this hearing panel.
12. All other requests for relief are hereby denied.

APPEAL PROCEDURES:

Any party aggrieved by the decision of this panel may, pursuant to Chapter 536 of the Missouri Statutes, appeal this decision to a state court or a federal court, within 30 days of the date of the decision.

FOR THE HEARING PANEL:

All concur.

J. Michael Cato, Hearing Chairperson
Mrs. Karen Schwartz, Panel Member
Dr. George Wilson, Panel Member

BY:

J. Michael Cato, Hearing Chairperson

CERTIFICATE OF SERVICE

the undersigned certifies that a copy of the foregoing was served upon each party to this action,
TO-WIT;

Parent Pro Se

James G. Thomeczek
Thomeczek Law Firm, LLC
1120 Olivette Executive Parkway, Suite 210
St. Louis, Mo. 63132
School District Counsel

by first class mail, return receipt requested and by depositing same in the United States Post Office in Advance,
Missouri, with sufficient postage, on this Day of , 2001.
